

6 Official Opinions of the Compliance Board 32 (2008)

NOTICE REQUIREMENTS – METHOD – SUBMISSION OF NOTICE TO WIDELY CIRCULATED LOCAL NEWSPAPER, HELD TO BE PERMISSIBLE – TIMING – ADEQUACY OF NOTICE PERIOD CANNOT BE ASSESSED – OPEN SESSION REQUIREMENTS – FAILURE TO COMPLY, HELD TO BE A VIOLATION

May 1, 2008

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The Open Meetings Compliance Board has considered your complaint alleging that the School Board Nominating Commission of Anne Arundel County violated the Open Meetings Act by providing insufficient notice of a meeting on January 17, 2008; improperly deciding at the January 17 meeting to “meet again on the evening of January 23 at a secret location in closed session”; and holding a “secret meeting” on January 23. For the reasons stated below, the Compliance Board is unable to reach a conclusion about the sufficiency of notice of the January 17 meeting. The Compliance Board does find that the Commission violated the Act by holding an improperly closed meeting on January 23.

I

Notice of January 17 Meeting

A. Complaint and Response

The complaint asserted that public notice of the January 17, 2008, meeting of the School Board Nominating Commission was given in the local newspaper on January 16. With respect to the timing of the notice, the complaint alleged that “the Commission had ten weeks from the day its membership and chair were publicly announced to the date it published its first public meeting notice.... In other words, there was no compelling reason to only give the public one day’s notice.”¹

¹ The complaint also expressed concern about the use of private mail accounts by members of the Commission to communicate with one another about Commission business. The complaint did not allege that this e-mail correspondence constituted a “meeting” subject to the Open Meetings Act, as indeed would be most unlikely. *See 2 OMCB Opinions* 78 (1999). Any issue regarding public access to this e-mail correspondence under the Maryland Public Information Act is beyond the jurisdiction of the Compliance Board.

In a timely response on behalf of the Commission, Joshua C. Greene, the Commission's Chairman, stated his recollection "that we contacted the Capital newspaper on January 11, 2008 ... to publish the notice of our January 17 meeting at the earliest possible occasion prior to that meeting. We anticipated that to be Monday, January 14. While we do not have an archived copy of the Capital edition that contained the notice, I believe it appeared in either the January 14 or 15 edition. In addition, as a result of not having an official website or e-mail capability (other than private or professional e-mail accounts of individual Commissioners) prior to the time of the meeting, we were unfortunately unable to utilize such a medium for a more robust communication to the public."

B. Analysis

The Act commands that, before a meeting, "a public body shall give reasonable advance notice of the session." §10-506(a).² One permissible method of notice is "by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government to which the public body is a part." §10-506(c)(2). Because the Capital newspaper is a primary source for reporting on the activities of government agencies in Anne Arundel County, including those related to education, delivery of the meeting notice to the Capital was reasonable.

Whether the timing of the notice was reasonable is a more difficult question. A key piece of information, not part of the record before us, is when the January 17 meeting was scheduled. If it was only scheduled shortly before January 11, contacting the Capital on that date would have been reasonable.³ If, on the other hand, members of the Commission knew weeks before January 17 that they would meet on that date, waiting until a week before the meeting to deliver notice to the Capital would have been a violation. See 4 *OMCB Opinions* 6 (2004). We are unable to express an opinion on this point.

² Unless otherwise indicated, all statutory references in this opinion are to the State Government Article, Annotated Code of Maryland.

³ Assuming that the meeting notice was not a paid advertisement, the Commission had no control over whether or when the Capital would publish it. Thus, even if, as alleged in the complaint, the newspaper did not publish an item about the meeting until the day before, this aspect of the timing problem cannot be attributed to the Commission. To avoid this situation, a public body should ordinarily not use delivery of notice to the news media as its sole means of giving public notice. At the time, however, apparently the Commission lacked other means. The Commission has subsequently developed a website that it uses to provide notice of its meetings.

II

Closing of January 23 Meeting

A. Complaint and Response

The complaint alleged that the Commission concluded the January 17 meeting “with a decision by its members to meet again the evening of January 23 at a secret location in a closed session. Among the issues to be discussed at the January 23 meeting were the proposed bylaws and the extent to which the existing bylaws of the School Nominating Convention (the unofficial body that proceeded the Commission) would be used as a basis for the Commission’s bylaws.”

The response acknowledged that the Commission’s process leading up to the January 23 closed meeting, and the meeting itself, were conducted without adherence to the Open Meetings Act. “At the time of the January 17, 2008 meeting the Commission was under an inaccurate impression that it would operate similarly to the Judicial Nominating Commission of Anne Arundel County, which does not have to comply with the Act....^[4] After subsequent consultations with both the Attorney General’s Office as well as the Ethics Commission, the Commission understands that all of its activities, including meetings, must comply with the Act.” The response went on to note that, in mitigation of its infraction, the minutes for the January 23 meeting have been posted on the Commission’s website.

B. Analysis

Little needs to be said about the January 23 closed meeting. The Commission was created by statute, §3-110(b) of the Education Article, Annotated Code of Maryland. It is therefore “a public body” subject to the Open Meetings Act. §10-502(h)(1). Except as otherwise authorized by the Act, the Commission’s meetings are to be open. §10-505. The closed meeting on January 23 violated the Act.

OPEN MEETINGS COMPLIANCE BOARD

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⁴ A judicial nominating commission is indeed not covered by the Act, but that is because of a specific exclusion from the definition of “public body.” §10-502(h)(3)(ii).